

INSTRUCTION NO. [1-401]

**[Enhancement Instruction Pursuant to 46-1-401, MCA, 2003]**

The State has alleged that in committing the offense[s] of \_\_\_\_\_,  
the Defendant acted [with] [by] [here insert appropriate enhancement language].  
Whether the Defendant [insert enhancement language] in the commission of the  
offense[s] for which the Defendant is being tried, must be proved by the State by  
proof beyond a reasonable doubt. This is a separate finding by you, independent  
of the issue of whether the Defendant is guilty of the offense[s] of  
\_\_\_\_\_. Nevertheless, you cannot find the Defendant acted [with]  
[by] [insert appropriate enhancement language] unless you first determine beyond  
a reasonable doubt that the Defendant committed the offense[s]  
of \_\_\_\_\_.

Your finding with respect to [appropriate enhancement language] must be  
separately stated on the verdict form.

GIVEN: \_\_\_\_\_  
District Judge

Source: MCJI 1-401

Plaintiff's Proposed Instruction No. \_\_\_\_\_ Defendant's Proposed Instruction No. \_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By \_\_\_\_\_

**[Enhancement Instruction, 2003, Source and Comments]**

SOURCE: 46-1-401, MCA (2003)

COMMENT: This instruction should accompany the instructions for the following offenses or sentencing options:

**Deliberate Homicide** (MCA §§ 45-5-102; 46-18-303)  
(when the State has given notice of its intention to seek the death penalty)

**Stalking** (MCA § 45-5-220) (when it is alleged that the offense is a first offense against a victim who was under the protection of a restraining order)

**Sentence Enhancement for offenses committed because of victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities** (MCA § 45-5-222)

**Aggravated Kidnapping** (MCA § 45-5-303) (where it is alleged that the defendant did not voluntarily released the victim alive, in a safe place, and with no serious bodily injury)

**Sexual Assault** (MCA § 45-5-502) (where it is alleged that the victim was less than 16 years old and the offender is three or more years older than the victim, or where it is alleged that the offender inflicted bodily injury upon anyone in the course of committing sexual assault).

**Sexual Intercourse Without Consent** (MCA § 45-5-503) (where it is alleged that the victim was less than 16 years old and the offender is three or more years older than the victim, or where it is alleged that the offender inflicted bodily injury upon anyone in the course of committing sexual intercourse without consent).

**Incest** (MCA § 45-5-507) where it is alleged that the victim was less than 16 years old and the offender is three or more years older than the victim, or where it is

alleged that the offender inflicted bodily injury upon anyone in the course of committing incest).

**Nonsupport** (MCA § 45-5-621) (where it is alleged that the person has failed to provide support under a court or administrative order for 6 months or more or who has failed to provide support in a cumulative amount equal to or in excess of 6 months' support)

**Additional Sentence for criminal street gang-related felony** (MCA § 45-8-404) (if it is alleged that the underlying felony is committed on the grounds of, or within 1,000 feet of, a public school, as defined in 20-6-501, during hours when the facility is open for classes or school-related programs or when minors are using the facility)

**Additional sentence for offenses committed with dangerous weapon.** (MCA § 46-18-221) (where it is alleged that the defendant, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon)

**Additional sentence for offense committed while carrying a handgun loaded with armor-piercing ammunition.** (MCA § 46-18-224) (where it is alleged that the defendant knowingly used or carried a handgun loaded with armor-piercing ammunition during the commission of the offense)